

Attachment 3

REQUEST FOR WAIVER, RELEASE, HOLD HARMLESS and INDEMNIFICATION AGREEMENT, & WAIVER

This document, which includes a REQUEST FOR WAIVER, a RELEASE, HOLD HARMLESS, and INDEMNIFICATION AGREEMENT, and a WAIVER (collectively, “AGREEMENT”), is made and entered into this _____ Day of _____, 2004, by and between [insert full legal name of Owner or Owners], his/their HEIRS, SUCCESSORS, DEVISEES, AGENTS, ASSIGNS, REPRESENTATIVES and INTERESTS (hereinafter “OWNER”) and the COMMONWEALTH OF VIRGINIA, acting through the Department of Health (DEPARTMENT), including, without limitation, any and all of its agencies, boards, and commissions, their insurer(s), officers, directors, employees, representatives, and agents, (hereinafter the COMMONWEALTH OF VIRGINIA).

WHEREAS, OWNER is the owner of that certain parcel described as _____ **[insert legal description of property]** containing, among other improvements, an occupied structure consisting of _____ [describe occupied structure- i.e. four bedroom single family dwelling] (hereinafter “PROPERTY”); and

WHEREAS, the DEPARTMENT, in accordance with the *Sewage Handling and Disposal Regulations* (12 VAC 5-610-20 *et seq.*, as amended July 1, 2000, the REGULATIONS), has determined that the onsite sewage system serving the PROPERTY is failing and must be repaired or replaced; and

WHEREAS, the DEPARTMENT has determined that, under the REGULATIONS, the repair or replacement system must provide Secondary Effluent and/or Pressure Dosing [**Note to VDH Staff: modify this clause according to whether both SE and PD are required or whether one or the other is required- see Flow Chart in Attachment 4**] in order to adequately protect public health and ground and surface water resources; and

WHEREAS, § 32.1- 164.1:1 of the *Code of Virginia* provides that whenever any onsite sewage system is failing and the regulations for repairing such failing system impose (i) a requirement for treatment beyond the level of treatment provided by the existing onsite sewage system when operating properly or (ii) a new requirement for pressure dosing, an owner may

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request a waiver (hereinafter "WAIVER") from the requirements of the REGULATIONS pertaining to Secondary Effluent and/or Pressure Dosing for a repair system; and

WHEREAS, the State Health Commissioner shall grant such WAIVER, provided that the owner's failing system was not installed illegally without a permit; and

WHEREAS, the DEPARTMENT has determined, and OWNER affirms, that the failing system currently serving the PROPERTY was not installed illegally without a permit, and

REQUEST FOR WAIVER

WHEREAS, OWNER, by executing this AGREEMENT, hereby requests that the State Health Commissioner grant the WAIVER provided at §32.1-164.1:1 B. of the *Code of Virginia* from the requirements for _____ Secondary Effluent and/or _____ Pressure Dosing [**Note to VDH Staff: modify this clause according to whether both SE and PD are required or whether one or the other is required- see Flow Chart in Attachment 4**].

WAIVER

NOW, THEREFORE, in exchange for the mutual promises contained herein, the parties agree as follows:

The WAIVER provided at §32.1-164.1:1 B. of the *Code of Virginia* is hereby granted and shall be effective 24 hours after OWNER provides certification to the DEPARTMENT that this AGREEMENT has been recorded in the land records of the Circuit Court having jurisdiction over the PROPERTY.

RELEASE, HOLD HARMLESS, and INDEMNIFICATION AGREEMENT

OWNER agrees to, and hereby does, release the COMMONWEALTH OF VIRGINIA from any and all claims, complaints, demands, actions, causes of action, liabilities, and obligations of whatever source or nature, whether administrative, legal or equitable, whether known or unknown, which OWNER now has or may have in the future relating to or arising from the WAIVER, including, without limitation, any and all claims due to the failure of any person to comply with federal, state, or local laws or regulations, claims under the Virginia Tort Claims Act, the Virginia Constitution, the United States Constitution and amendments thereto, or under common law. Furthermore, OWNER expressly releases the COMMONWEALTH OF VIRGINIA from any and all claims, actions, causes of action, or obligations under the Virginia

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Onsite Sewage Indemnification Fund, §32.1-164.1:01 of the *Code of Virginia*, that may arise from or be related to the repair, replacement, and/or operation of OWNER's onsite sewage disposal system pursuant to the WAIVER.

OWNER also agrees to hold harmless and indemnify the COMMONWEALTH OF VIRGINIA for any sum of money or judgment against the COMMONWEALTH OF VIRGINIA, as well as costs and reasonable attorneys' fees incurred in the defense of any action arising out of or related to the WAIVER.

Severability. If any portion of this AGREEMENT is held to be void or deemed unenforceable for any reason, the remaining portion shall survive and remain in effect, unless the effect of such severance shall defeat the parties' intent as set forth herein, with the parties asking the Court to construe the remaining portions consistent with the expressed intent of the parties.

Entire Agreement. OWNER acknowledges that OWNER has had an opportunity to consult with an attorney concerning OWNER's rights and obligations. OWNER acknowledges that OWNER has had sufficient time and opportunity to consider this AGREEMENT with the COMMONWEALTH OF VIRGINIA, that OWNER has read this AGREEMENT, that OWNER fully understands and agrees to its terms and conditions, and that there exists no other promises, representations, inducements or agreements related to this AGREEMENT, except as specifically set forth herein. Furthermore, OWNER acknowledges that this constitutes the entire agreement between OWNER and the COMMONWEALTH OF VIRGINIA.

[Name]

District Health Director

REQUEST FOR DEPARTMENT TO DESIGN A REPAIR SYSTEM

? Check Here if this Section Applies.

OWNER hereby requests that an employee of the Virginia Department of Health design OWNER's sewage system. OWNER understands that the DEPARTMENT cannot serve as

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OWNER's consultant and that there are design choices that, depending upon OWNER's needs, may increase costs in the long run because of the requirement to upgrade OWNER's sewage system at the time the PROPERTY is transferred. OWNER furthermore understands and affirms that the DEPARTMENT cannot provide such in-depth consulting as OWNER might need or desire, and that it may be in OWNER's best interests to seek advice from competent private professionals to discuss the legal and financial considerations for all of the possible design options available in the marketplace. OWNER acknowledges and accepts that OWNER may receive an inferior design from the DEPARTMENT because the DEPARTMENT has limited resources for detailed consulting and because the DEPARTMENT cannot propose specific proprietary products which may benefit OWNER because of its regulatory relationship with manufacturers. OWNER acknowledges and understands that OWNER may receive a more complete and well-advised design if OWNER seeks advice from private consultants because private consultants are not subject to the same resource restrictions and regulatory relationships as the DEPARTMENT.

Understood and Accepted:

[Full Legal Name of Owner or Owners]

Date

COMMONWEALTH OF VIRGINIA

CITY / COUNTY OF _____.

On this the _____ day of _____, 2004, appeared before me
_____ and _____ who affirmed that he/they have the
authority to enter into this AGREEMENT and that the signatures thereto are their own.

Notary Public

My Commission expires: